EMPLOYEE ACKNOWLEDGEMENT OF DOMESTIC, CHILD & ELDER ASSAULT AND ABUSE REPORTING REQUIREMENTS

Attached, please find copies of CHA (California Healthcare Association) Consent 2007 Manual, Chapter 19 describing the Child Abuse Reporting Requirements and California Penal Code Sections used in the definition of Physical Abuse; Domestic Abuse Reporting Requirements and Dependent Adult Abuse Reporting Requirements. You should read this material carefully. If you have any questions regarding your reporting obligations, please discuss this with the Administrative Director, Nursing Supervisor, or VP Patient Care.

The law requires specified health care practitioners who have knowledge of or observe a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse or neglect to report the known or suspected instance of child abuse to a law enforcement agency immediately or as soon as practicably possible by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concern the incident.

Your supervisor and administration should be notified whenever you believe that you may be required to report suspected domestic abuse. In addition, usually several hospital employees and medical staff members will learn about the same instance of suspected abuse. The patient's attending physician (or other designated person) shall be response for making the reports or for identifying the member of the health care team who shall assume this responsibility.

Your supervisor and administration should be notified whenever you believe that you may be required to report suspected child abuse. In addition, usually several hospital employees and medical staff members will learn about the same instance of suspected abuse. The patient's attending physician (or another person?) shall be responsible for making the reports or for identifying the member of the health care team who shall assume this responsibility.

Your supervisor and administration should be notified whenever you believe that you may be required to report suspected elder or dependent adult abuse. In addition, usually several hospital employees and medical staff members will learn about the same instance of suspected abuse. The patient's attending physician (or other designated person) shall be response for making the reports or for identifying the member of the health care team who shall assume this responsibility.

I have received the CHA 2007 Manual, Section 19 and I have read the attached information. I understand that I must comply with these legal obligations to report abuse and neglect. And if I have any questions or concerns, I will discuss them with the VP Nursing, Nursing Supervisor or my Clinical Director.

Date: ______________________________

Signature: ______________________________
[employee]

Signature: ______________________________
[witness]

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ASSAULT AND ABUSE REPORTING REQUIREMENTS

I. REPORTS REQUIRED BY LAW

A. SCOPE OF CHAPTER

Hospitals and other health care providers are required by law to make certain reports. This chapter addresses the laws that require reporting of assault and abuse, including injuries by deadly weapon, rape, child abuse, elder abuse, dependent adult abuse and injuries/conditions resulting from abuse or neglect found in a patient received from a licensed health facility. In addition, a number of other reporting requirements are discussed in other chapters of this manual:

Chapter 4	Sterilization, hysterectomy, abortion, convulsive therapy, psychosurgery
Chapter 7	Use of investigational drugs and devices
Chapter 9	Transfers of patients
Chapter 10	Release of a minor to other than parent, guardian, or legally authorized caregiver, prenatal and newborn disorders, birth certificates
Chapter 11	Death certification, fetal death certification and notification of coroner
Chapters 12, 13	Psychiatric patients: use of restraints or seclusion, denial of patient rights, deaths in restraint or seclusion, specified patients who are a danger to self or others or gravely disabled
Chapter 20	Various patient diseases, disorders, injuries and conditions; adverse events; medication errors
Chapter 21	Unanticipated outcomes, sentinel events
Chapter 23	HIV infection, diagnosis of acquired immune deficiency syndrome (AIDS), notification of patient who may have received infectious blood product

The relevant chapters should be consulted regarding specific reporting requirements.

B. CONFIDENTIALITY CONSIDERATIONS

Caution should be exercised in releasing patient-identifiable information for reporting purposes to avoid violating the laws governing confidentiality of medical, mental health or substance abuse patient information and records. The federal HIPAA privacy regulations and the Confidentiality of Medical Information Act, which are discussed in chapter 16, generally allow the disclosure of patient-identifiable information whenever such disclosures are required by law, but only to the extent necessary to comply with the law. HIPAA contains specific provision for disclosure of protected health information to appropriate government authorities authorized by law to receive reports of child abuse or neglect [45 C.F.R. Section 164.512(b)(1)(ii)]. HIPAA also authorizes disclosure of information about individuals reasonably believed to be victims of abuse, neglect or domestic violence to government authorities legally authorized to receive such reports, to the extent required by law, or if the individual agrees to the disclosure; or to the extent disclosure is expressly authorized by law and either disclosure is necessary to prevent serious harm to the individual or other potential victims; or the individual is incapacitated, the information is not intended to be used against the individual, and an immediate enforcement activity depends upon the disclosure and would be materially and adversely affected by waiting until the individual is able to agree to the disclosure [45 C.F.R. Section 164.512(c)(1)].

The special restrictions that apply to certain mental health patient information and records (*see chapter 17*), substance abuse patient information and records (*see chapter 18*), or HIV information (*see chapter 23*) must be followed, if applicable (*see 45 C.F.R. Section 164.512).*

C. SUMMARY OF ASSAULT AND ABUSE REPORTING REQUIREMENTS

CHA has included a table at the end of this chapter titled "Assault and Abuse Reporting Requirements" (CHA Table 19-A) summarizing assault and abuse reporting requirements.

II. STATUTORY DUTY TO REPORT CERTAIN INJURIES AND CONDITIONS

A. NATURE OF THE DUTY TO REPORT

California law imposes a duty on hospitals and physicians to make oral and written reports to local authorities when a person comes or is brought to a hospital or is under the professional care of a physician, and such person is suffering from:

1. An injury caused by a firearm or assaultive or abusive conduct *(see III. "Injuries by Firearm or Assaultive or Abusive Conduct," page 19.2);*
2. Sexual assault/rape *(see V. "Sexual Assault and Rape," page 19.5)*;

3. Child abuse *(see VI. "Child Abuse and Neglect," page 19.7);*
4. Abuse of elders and dependent adults *(see VII. "Abuse of Elders and Dependent Adults," page 19.17);*
5. An injury or condition resulting from neglect or abuse in a patient transferred from another health facility *(see VIII. "Injury or Condition in a Patient Received From a Licensed Health Facility Resulting from Neglect or Abuse," page 19.25).*

In addition, hospitals must report violence against hospital personnel in specified circumstances *(see IV. "Violence Against Hospital Personnel," page 19.5.)*

B. FAILURE TO REPORT

CRIMINAL LIABILITY

Penal Code Section 11162 states that any person required to report injuries by firearms, assaultive or abusive conduct *(see III. "Injuries by Firearm or Assaultive or Abusive Conduct," below)* but who fails to do so is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceeding six months or by a fine not exceeding $1,000, or both. Penal Code Section 11166(c) states that a mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect *(see VI. "Child Abuse and Neglect," page 19.7)* is also guilty of a misdemeanor (same punishment as above). Welfare and Institutions Code Section 15630(h) contains similar penalties for failure to report elder or dependent adult abuse. *(See VII. "Abuse of Elders and Dependent Adults," page 19.17.)*

CIVIL LIABILITY

In *Landeros v. Flood*, 17 Cal.3d 399 (1976), the California Supreme Court ruled that an abused child may recover damages for subsequent injuries suffered at the hands of his or her parents from a hospital or physician if it can be proven that the hospital or physician knew or should have known that the child was a victim of child abuse or neglect, and the hospital failed to report the abuse in accordance with applicable statutory requirements.

It is possible this ruling might be extended to other situations, such as imposition of civil liability for failure to report elder abuse or an injury or condition resulting from neglect or abuse in a patient transferred from another health facility.

III. INJURIES BY FIREARM OR ASSAULTIVE OR ABUSIVE CONDUCT

Penal Code Section 11160 requires health practitioners employed by specified entities to make reports to a local law enforcement agency when they treat persons with specified injuries. Additionally, under Penal Code Section 11161, every physician treating such persons also has a duty to make a report. A single report may be made where the reporting obligation falls upon two or more persons.

A. WHO MUST REPORT

Reports must be made by (1) any health practitioner employed in a health facility, clinic, physician's office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department, and (2) a physician who has an injured patient under his or her charge or care.

The reporting duties under this law are individual, provided that when two or more persons who are required to report are present and jointly have knowledge of a reportable event, they may agree among themselves to report as a team. The team may mutually select a member of the team to make a report by telephone and a single written report. The written report must be signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so must thereafter make the report.

No supervisor or administrator may impede or inhibit the reporting duties required under the law and no person making a report may be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established consistent with the above. The internal procedures must not require any employee required to make a report to disclose his or her identity to the employer.

B. REPORTS REQUIRED TO BE MADE

A report must be made when a health practitioner, in his or her professional capacity or within the scope of his or her employment, provides medical services for a *physical* condition to a patient whom he or she knows or reasonably suspects is a person described as follows:

1. A person suffering from any wound or other *physical* injury where the injury is by means of a firearm, whether inflicted by the patient him/herself or by another person.
2. A person suffering from any wound or other *physical* injury inflicted upon the person where the injury is the result of assaultive or abusive conduct [Penal Code Section 11160].

The duty to report arises where the health practitioner provides medical services to a patient for *any* physical condition, not just the condition or injury arising from the assault, battery or firearm incident.

A report must also be made by every physician who has such a person under his or her charge or care [Penal Code Section 11161(a)].

C. DEFINITIONS

"Assaultive or abusive conduct" includes any of the following offenses, as they are defined in their respective provisions of the Penal Code:

1. Murder
2. Manslaughter
3. Mayhem
4. Aggregative mayhem
5. Torture
6. Assault with intent to commit mayhem, rape, sodomy or oral copulation
7. Administering controlled substances or anesthetic to aid in commission of a felony
8. Battery
9. Sexual battery
10. Incest
11. Throwing any vitriol, corrosive acid or caustic chemical with intent to injure or disfigure
12. Assault with a stun gun or tazer
13. Assault with a deadly weapon, firearm, assault weapon or machine gun, or by means likely to produce great bodily injury
14. Rape
15. Spousal rape
16. Procuring any female to have sex with another man
17. Child abuse or endangerment
18. Abuse of spouse or cohabitant
19. Sodomy
20. Lewd and lascivious acts with a child
21. Oral copulation
22. Sexual penetration by a foreign object
23. Elder abuse
24. An attempt to commit any crime specified in the offenses listed above.

[Penal Code Section 11160(d)]

"Health practitioner" is defined in the law to include a physician, surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage and family therapist, clinical social worker or any other person who is currently licensed under Business and Professions Code Section 500 *et seq.*; an emergency medical technician I or II, paramedic or other person certified pursuant to Health and Safety Code Section 1797 *et seq.*; a psychological assistant registered pursuant to Business and Professions Code Section 2913; a marriage and family therapist trainee, as defined in Business and Professions Code Section 4980.03(c); an unlicensed marriage and family therapist intern registered under Business and Professions Code Section 4980.44; a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; or a medical examiner or any person who performs autopsies. [Penal Code Sections 11162.5(a) and 11165.7]

"Injury" does not include any psychological or physical condition brought about solely through the voluntary administration of a narcotic or restrictive dangerous drug [Penal Code Section 11160(c)].

"Reasonably suspects" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate from his or her training and experience, to suspect [Penal Code Section 11162.5(d)].

D. TIMING AND FORM OF REPORT

A report by telephone must be made immediately or as soon as practically possible to a local law enforcement agency.

A written report must be prepared and sent to a local law enforcement agency within two working days. The Office of Emergency Services has developed a standard form to be used by health practitioners. The "Suspicious Injury Report" may be found at www.oes.ca.gov/Operational/OESHome.nsf/CJPD_documents?OpenForm; click on the OES 920 – Suspicious Injury Report link.

A report must be made even if the person who suffered the injury has died, regardless of whether or not the injury or assaultive or abusive conduct was a factor contributing to the death and even if the evidence of the conduct of the perpetrator of the injury or assaultive or abusive conduct was discovered during an autopsy.

E. NOTIFICATION OF VICTIM

If the patient was a victim of abuse, neglect or domestic violence (except child abuse or neglect), the patient must be promptly informed that a report has been or will be made, unless:

1. The health care provider believes, in the exercise of professional judgment, that informing the patient would place him or her at risk of serious harm; or
2. The health care provider would be informing a personal representative, and the provider reasonably believes the personal representative is responsible for the abuse, neglect or other injury, and that informing the

personal representative would not be in the best interests of the patient as determined by the provider in the exercise of professional judgment. [45 C.F.R. Section 164.512(c)]

Verbal notification to the patient is sufficient. A report must be made even if the patient objects. The health care provider may wish to suggest that the victim go to a protected environment due to the risk of the abuser's retaliation after the report is made.

If the patient was not a victim of abuse, neglect or domestic violence (for example, the patient was an accident victim or attempted suicide), the patient need not be notified that a report has been or will be made. *(However, see chapter 15, IV. "Right to Accounting of Disclosures of Protected Health Information.")*

F. MEDICAL RECORD DOCUMENTATION

Penal Code Section 11161 recommends (but doesn't require) that the medical record of a person who is the subject of a report include the following:

1. Any comments by the injured person regarding past domestic violence or regarding the name of any persons suspected of inflicting the wound, other physical injury, or assaultive or abusive conduct upon the person.
2. A map of the injured person's body showing and identifying injuries and bruises at the time of the health care, and a copy of the law enforcement reporting form.

G. IMMUNITY FROM LIABILITY

Penal Code Section 11161.9 specifies that a health practitioner who makes a report of injury or abuse as specified under the law shall not incur civil or criminal liability as a result of any report required or authorized by the law. Furthermore, the practitioner shall not incur civil or criminal liability as a result of providing access to the victim at the request of an adult protective services agency or a law enforcement agency.

Health practitioners who have made reports and who incur attorneys' fees as a result of legal action taken against them on the basis of making the report may present a claim to the state Board of Control for their reasonable attorney's fees if the person prevails in the legal action.

Immunity is also provided in connection with the taking of photographs of a person about whom a report is made or for disseminating the photographs to local law enforcement with the reports. However, no immunity is provided for any other use of the photographs.

No employee may be discharged, suspended, disciplined or harassed for making a report pursuant to this law.

H. CONFIDENTIALITY

The reports required by this law must be kept confidential by the health facility, clinic or physician's office that submitted the report, and by local law enforcement agencies [Penal Code Section 11163.2(b)].

In no case shall the person suspected or accused of inflicting the wound, other injury, or assaultive or abusive conduct upon the injured person or his or her attorney be allowed access to the injured person's whereabouts.

In addition, these reports and related information may be given, upon written request, to an elder death review team [Penal Code Section 11174.8] or a domestic violence review team [Penal Code Section 11163.3] in certain circumstances *(see chapters 16 and 17).*

In a court proceeding or administrative hearing, neither the physician-patient privilege nor the psychotherapist-patient privilege applies to the information required to be reported under this law [Penal Code Section 11163.2(a)].

I. SCREENING FOR DOMESTIC VIOLENCE

General acute care hospitals, acute psychiatric hospitals, special hospitals, psychiatric health facilities and chemical dependency recovery hospitals must establish written policies and procedures for routine screening of patients for purposes of detecting spousal or partner abuse [Health and Safety Code Section 1259.5]. The policies must include guidelines on all of the following:

1. Identifying, through routine screening, spousal or partner abuse among patients.
2. Documenting patient injuries or illnesses attributable to spousal or partner abuse.
3. Educating appropriate hospital staff about the criteria for identifying, and the procedures for handling, patients whose injuries or illnesses are attributable to spousal or partner abuse.
4. Advising patients exhibiting signs of spousal or partner abuse of crisis intervention services that are available either through the hospital or through community-based intervention and counseling services.
5. Providing patients who exhibit signs of spousal or partner abuse with information on domestic violence and a referral list, to be updated periodically, of private and public community agencies that provide or arrange for the evaluation and care of persons experiencing spousal or partner abuse, including hotlines, shelters, legal services and information about temporary restraining orders.

Similar requirements apply to licensed clinics. [Health and Safety Code Section 1233.5; Penal Code Section 13700]

IV. VIOLENCE AGAINST HOSPITAL PERSONNEL

A. ASSAULT OR BATTERY AGAINST ON-DUTY PERSONNEL

Under Health and Safety Code Section 1257.7(d), acts of assault or battery against on-duty hospital personnel are subject to reporting requirements.

REQUIRED REPORTS

Any act of assault or battery against any on-duty hospital personnel that results in injury or involves the use of a firearm or other dangerous weapon *must* be reported to the local law enforcement agency.

AUTHORIZED REPORTS

Any other act of assault or battery against on-duty hospital personnel *may* be reported to the local law enforcement agency.

REPORTING PROCESS

Reports must be made within 72 hours of the incident.

The law does not specify whether the reporting requirement lies with the facility or with individuals employed by the facility.

The law does not specify whether the report must be made orally or in writing; whichever method the hospital uses, it should maintain adequate documentation of the report. The law also does not specify the content of the report (i.e., whether the name of the patient or the employee must be reported or whether details of the incident must be reported). It would therefore appear that a summary report complies with the law. For confidentiality reasons, it is recommended that hospitals not report the names of patients or employees involved in these incidents.

CHA recommends that hospitals develop a reporting policy and procedure and specify who is responsible for ensuring that reports are made.

CHA has developed a form, "Assault or Battery Against On-Duty Hospital Personnel" (CHA Form 19-1), which hospitals may use to fulfill this requirement.

IMMUNITIES AND PENALTIES

No health facility or facility employee who makes a required report shall be civilly or criminally liable for making the report.

No health facility or facility employee who makes an authorized report shall be civilly or criminally liable for making the report, unless it can be proven that a false report was made and that the facility or employee knew that the report was false or made the report with reckless disregard for the truth or falsity of the report. Any facility or facility employee who makes an authorized report that is known to be false or with reckless disregard of the truth or falsity of the report shall be liable for any damages caused.

Any individual knowingly interfering with or obstructing the lawful reporting process is guilty of a misdemeanor.

B. VIOLENCE AGAINST COMMUNITY HEALTH CARE WORKER

An employer of a community health care worker must file a report with the State Department of Industrial Relations, Division of Labor Statistics and Research regarding any violence committed against that health care worker. A **"community health care worker"** means an individual who provides health care or health care-related services to clients in home settings. **"Violence"** means a physical assault or a threat of a physical assault. The Division may prescribe the form and detail and time limits for filing the report. The employer must keep a copy of the report. [Labor Code Section 6332]

The Division has not prescribed any form at this time. Thus, hospitals should prepare a letter including the relevant information and send it to:

> Department of Industrial Relations
> Division of Labor Statistics and Research
> 455 Golden Gate Avenue, 9th Floor
> San Francisco, CA 94102
> (415) 703-4780

For confidentiality reasons, it is recommended that hospitals not report the names of patients or employees involved in these incidents.

V. SEXUAL ASSAULT AND RAPE

A. REPORTING REQUIREMENTS

As with other reportable crimes, Penal Code Section 11160 requires reporting of a sexual assault to local law enforcement authorities by telephone and in writing. Local law enforcement officials must be notified by telephone prior to the commencement of the required medical examination. (Title 11, California Code of Regulations, Section 920 *et seq.* repeats the requirements of the statutes and contains the required forms.)

If the patient was a victim of abuse or domestic violence (except for victims of child abuse), the patient must be promptly informed that a report has been or will be made, unless:

1. The health care provider believes, in the exercise of professional judgment, that informing the patient would place him or her at risk of serious harm; or
2. The health care provider would be informing a personal representative, and the provider reasonably believes the personal representative is responsible for the abuse, neglect or other injury, and that informing the

personal representative would not be in the best interests of the patient as determined by the provider in the exercise of professional judgment. [45 C.F.R. Section 164.512 (c)]

A verbal notification to the patient is sufficient. A report must be made even if the patient objects.

B. EXAMINATION OR REFERRAL OF VICTIMS OF SEXUAL ASSAULT

Penal Code Section 13823.9(c) requires each county to designate at least one general acute care hospital to perform examinations on victims of sexual assault including child molestation. Additionally, all public and private general acute care hospitals must either comply with the standards, protocols and guidelines in examining or treating victims of sexual assault and attempted sexual assault, including child molestation, or "adopt a protocol for immediate referral of these victims to a local hospital that so complies and shall notify local law enforcement agencies, the district attorney and local victim assistance agencies of the adoption of the referral protocol." [Health and Safety Code Section 1281].

C. STATUTORY DUTY OF PHYSICIAN

Penal Code Section 13823.5 requires that each physician in a public or private general acute care hospital who conducts an examination for evidence of a sexual assault or attempted sexual assault, including child molestation, must use the standard form adopted by the state Department of Justice in cooperation with the state Department of Health Services, and must make such observations and perform such tests as may be required for recording of the data required by the form if the patient consents to be so examined. Reports should be made on the following OCJP forms:

1. 923: Forensic Medical Report: Acute Adult/Adolescent Sexual Assault Examination
2. 925: Forensic Medical Report: Nonacute Child/Adolescent Sexual Abuse Examination
3. 930: Forensic Medical Report: Acute Child/Adolescent Sexual Abuse Examination

Copies of these forms and instructions are available at www.oes.ca.gov/Operational/OESHome.nsf/CJPD_Documents?OpenForm or:

> Office of Emergency Services (formerly the Office of Criminal Justice Planning)
> Sexual Assault Branch
> Medical Protocol Liaison
> 1130 "K" Street, Room LL60
> Sacramento, CA 95814
> (916) 324-9120

For information about the forms or assistance in completing them, contact the University of California, Davis California Medical Training Center at (916) 734-4141.

D. CONSENT TO THE EXAMINATION

Forms OCJP 923, 925 and 930 contain distinct consent requirements in addition to those generally included in consent forms used by an institution in its emergency department, including:

1. An acknowledgment regarding a duty to report to law enforcement authorities the name and whereabouts of any persons who are victims of sexual assault *(see A. "Reporting Requirements," page 19.5)*.
2. A consent to a separate medical examination for evidence of sexual assault at public (county) expense to discover and preserve evidence of the assault.

Consent for a physical examination, treatment and collection of evidence must be obtained for purposes of complying with the minimum standards for examination and treatment contained in Penal Code Section 13823.11. Consent to an examination for evidence of sexual assault must be obtained prior to the exam and must include written documentation of each of the following:

1. Examination for the presence of injuries sustained as a result of the assault.
2. Examination for evidence of sexual assault and collection of physical evidence.
3. Photographs of injuries.

However, the victim (or parent or guardian) must be informed that he or she may refuse to consent to an evidentiary exam, and that such a refusal will not result in a denial of treatment of injuries, possible pregnancy and sexually transmitted diseases if the victim wishes to obtain treatment and consents thereto.

E. PROTOCOL FOR EXAMINATION AND TREATMENT OF VICTIM

The Office of Emergency Services (OES), formerly the Office of Criminal Justice Planning, has prepared a Medical Protocol for Examination of Sexual Assault and Child Sexual Abuse Victims for use by hospitals and physicians in meeting minimum standards for examination and treatment. OES has also prepared a Medical Protocol Informational Guide, which gives general reference information on evidence collection, examination, and psychological and medical treatment of victims. Copies of the Protocol and Guidelines are available from OES at the website or address under C. "Statutory Duty of Physician," above.

If the sexual assault could result in pregnancy, the victim must be provided with the option of postcoital contracep-

tion. If the victim requests it, postcoital contraception must be dispensed. [Penal Code Section 13823.11]

The victim also has the right to have a sexual assault counselor and at least one other support person of the victim's choosing present at any medical evidentiary or physical examination. The victim must be informed by the medical provider of this right, either orally or in writing, prior to the examination. A support person may be excluded from the exam if the law enforcement officer or medical provider determines that the presence of that individual would be detrimental to the purpose of the exam. [Penal Code Section 264.2]

F. CONFIDENTIALITY

The suspected sexual assault forms OCJP 923, 925 and 930 are subject to the same principles of confidentiality applicable to any other aspect of the medical record [Penal Code Section 13823.5(c)]. No information may be disclosed except that which is required to complete the form, except as permitted or required by another law (for example, in response to a court order or pursuant to child abuse reporting laws).

G. FORENSIC EXAM OF SUSPECT

A health practitioner who, in his or her professional capacity or within the scope of his or her employment, performs a forensic medical examination on a person in the custody of law enforcement from whom evidence is sought in connection with the commission or investigation of sexual assault, must prepare a written report. The report must be on the form developed by the Office of Emergency Services, and must be immediately provided to the law enforcement agency that has custody of the person examined. The required form is OES-950, "Forensic Medical Report: Sexual Assault Suspect Examination" and may be found at www.oes.ca.gov/Operational/OESHome.nsf/CJPD_Documents?OpenForm.

The health practitioners covered by this law are those who are employed in a health facility, clinic, physician's office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department.

The examination and report are subject to the Confidentiality of Medical Information Act, the physician-patient privilege, and the privilege of official information (*see chapter 16 regarding these laws*). However, the report must be released upon oral or written request to any person or agency involved in any related investigation or prosecution of a criminal case. The persons to whom the report must be released upon request include, but are not limited to, a law enforcement officer, district attorney, city attorney, crime laboratory, county licensing agency, and a coroner. The report may be released to defense counsel or another third party only through discovery of documents in the possession of a prosecuting agency or by court order.

A health practitioner who makes a report in accordance with this law is immune from civil or criminal liability.

No person, agency, or their designee required or authorized to report pursuant to this law who takes photographs of a suspect is civilly or criminally liable for taking the photographs, causing the photographs to be taken, or disseminating the photographs to a law enforcement officer, district attorney, city attorney, crime laboratory, county licensing agency, or coroner with the reports required in accordance with this law. However, the photographs may not be used in any other way.

No health practitioner may be required to perform a forensic medical examination as part of his or her duties as a health practitioner, except for those health practitioners who have entered into a contract to perform forensic medical exams.

[Penal Code Section 11160.1]

VI. CHILD ABUSE AND NEGLECT

A. STATUTORY DUTY OF HOSPITAL, PHYSICIAN AND OTHER HEALTH CARE PROVIDERS TO REPORT

Penal Code Sections 11164-11174.3 require a mandated reporter *(see B. "Persons Required or Permitted to Report Child Abuse," page 19.9)*, including a health practitioner (and a clergy member in limited situations), who *has knowledge of or observes* a child in his or her professional capacity or within the scope of his or her employment whom he or she *knows or reasonably suspects* has been the victim of child abuse or neglect, to report such suspected instances to a designated agency *(see C. "Reports to Law Enforcement," page 19.10)*. The initial report is to be made immediately, or as soon as practically possible, by telephone. A follow-up written report must then be made within 36 hours.

In addition, any mandated reporter who knows or reasonably suspects that the home or institution in which a child resides is unsuitable for the child because of abuse or neglect of the child must bring the condition to the attention of the agency to which he or she makes a report of the abuse or neglect, and must do so at the same time as the report is made [Penal Code Section 11166(f)].

A mandated reporter who has knowledge of or who reasonably suspects that a child is suffering serious emotional damage or is at a substantial risk of suffering serious emotional damage, evidenced by states of being or behavior, including, but not limited to, severe anxiety, depression, withdrawal or untoward aggressive behavior toward self or others, may (but is not required to) make a report to the appropriate agency. [Penal Code Section 11166.05]

California's child abuse and neglect reporting laws cover children under the age of 18.

This reporting requirement applies even if the child has died, regardless of whether or not the possible abuse was a factor contributing to the child's death, and even if suspected child abuse was discovered during an autopsy [Penal Code Section 11166(a)].

DEFINITIONS

"Abuse or neglect in out-of-home care" includes physical injury inflicted upon a child by another person by other than accidental means, sexual abuse, neglect, unlawful corporal punishment or injury, or the willful harming or injuring of a child or the endangering of the person or health of a child, where the person responsible for the child's welfare is a licensee, administrator or employee of a licensed community care or child day care facility or a facility licensed to care for children or the administrator or employee of a public or private residential home, school or other institution. It does not mean an injury caused by a peace officer's reasonable and necessary force while acting within the course and scope of the officer's employment as a peace officer. [Penal Code Section 11165.5]

"Child abuse or neglect" includes the following:

1. a physical injury that is inflicted by other than accidental means on a child by another person;
2. Sexual abuse;
3. Neglect;
4. Willful harming or injuring of a child or endangering of the person or health of a child;
5. Unlawful corporal punishment or injury; and
6. Abuse or neglect in out-of-home care.

[Penal Code Section 11165.6]

NOTE: Child abuse does not include a mutual affray between minors or an injury caused by a peace officer's reasonable and necessary force used while acting within the course and scope of the officer's employment as a peace officer.

"Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person. [Penal Code Section 11165.2]

"Neglect" includes **"severe neglect"** which means:

> the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those situations of neglect where a person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by Penal Code Section 11165.3(d), including the intentional failure to provide adequate food, clothing, shelter or medical care.

"Neglect" also includes **"general neglect"** which means:

> the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care or supervision where no physical injury to the child has occurred.

A child receiving treatment by spiritual means as provided in Welfare and Institutions Code Section 16509.1 or not receiving specified medical treatment for religious reasons, shall not be, for that reason alone, considered a neglected child.

The law also provides that "an informed and appropriate medical decision made by (the) parent or guardian after consultation with a physician or physicians who have examined the child does not constitute neglect" [Penal Code Section 11165.2]. This provision leaves open the question as to what constitutes an "informed and appropriate medical decision," but it appears to require reporting in situations in which the physician or another member of the health care team believes that a decision made by a child's parent or guardian after receiving the relevant information is not appropriate, in the sense that it is not consistent with the child's best interests. *(See chapter 5 regarding "medical neglect" and the withholding or withdrawal of life-sustaining treatment.)*

"Reasonable suspicion" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. The pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse [Penal Code Section 11166(a)].

"Sexual abuse" means sexual assault or sexual exploitation [Penal Code Section 11165.1].

"Sexual assault" means conduct in violation of various Penal Code sections including rape, rape in concert, statutory rape, incest, sodomy, lewd or lascivious acts upon a child, oral copulation, sexual penetration and child molestation.

Conduct described as "sexual assault" includes, but is not limited to, all of the following:

1. Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is emission of semen.
2. Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

3. Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that it does not include acts performed for a valid medical purpose.
4. The intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs and buttocks) or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.
5. The intentional masturbation of one's genitals in the presence of a child.

"Sexual exploitation" refers to any of the following:

1. Conduct involving matter depicting a minor engaged in obscene acts, which violates the law prohibiting the preparation, sale or distribution of obscene matter or employment of minors to perform obscene acts.
2. A person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or a person responsible for a child's welfare who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting or other pictorial depiction involving obscene sexual conduct. ("Person responsible for a child's welfare" means a parent; guardian; foster parent; or a licensed administrator or employee of a public or private residential home, residential school or other residential institution.)
3. A person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, videotape, negative or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in Penal Code Section 311.3.

"Unlawful corporal punishment or injury" means a situation where a person willfully inflicts upon a child cruel or inhuman corporal punishment or injury resulting in a traumatic condition. It does not include an amount of force that is reasonable and necessary for a person employed by or engaged in a public school to quell a disturbance threatening physical injury to a person or damage to property, for purposes of self-defense, or to obtain possession of weapons or other dangerous objects within the control of the pupil, as authorized by Education Code Section 49001. It also does not include the exercise of the degree of physical control authorized by Education Code Section 44807. In addition, unlawful corporal punishment or injury does not include an injury caused by a peace officer's reasonable and necessary force while acting within the course and scope of the officer's employment as a peace officer. [Penal Code Section 11165.4]

"Willful harming or endangering of a child" means a situation in which any person willfully causes or permits a child to suffer, or inflicts upon a child, unjustifiable physical pain or mental suffering, or having the care and custody of the child, willfully causes or permits the person or health of the child to be placed in a situation in which the child's person or health is endangered. [Penal Code Section 11165.3]

B. PERSONS REQUIRED OR PERMITTED TO REPORT CHILD ABUSE AND NEGLECT

MANDATED REPORTERS

Penal Code Section 11165.7 requires specified health care providers and clergy members (among others) to report suspected child abuse and neglect. Persons required by law to report are called "mandated reporters."

The law describes more than thirty-five categories of professionals or individuals who are considered mandatory reporters under the law [Penal Code Section 11165.7]. These categories of mandated reporters include social workers; teachers; teacher's aides and assistants; certain court employees; licensed day care workers; employees of child care institutions; peace officers; firefighters; probation officers; parole officers; custodial officers; specified district attorney investigators; local child support agency caseworkers; persons providing in-home supportive services to minors; and various community professionals and workers in schools, day care programs, youth centers and camps.

Health care providers that are mandated reporters are physicians, surgeons, psychiatrists, psychologists, dentists, residents, interns, podiatrists, chiropractors, licensed nurses, dental hygienists, optometrists, marriage and family therapists, clinical social workers, or any other person who is currently licensed under Business and Professions Code Section 500 *et seq.*; an emergency medical technician I or II, paramedic, or other person certified pursuant to Health and Safety Code Section 1797 *et seq.*; a psychological assistant registered pursuant to Business and Professions Code Section 2913; a marriage and family therapist trainee, as defined in Business and Professions Code Section 4980.03(c); an unlicensed marriage and family therapist intern registered under Business and Professions Code Section 4980.44; a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; or a medical examiner or any person who performs autopsies. [Penal Code Sections 11162.5 and 11165.7]

"Clergy member" means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization [Penal Code Section 11165.7(a)(32)]. Any clergy member who has knowledge of, or observes a child in his or her professional capacity or within the scope of his or her duties, whom he or she knows or reasonably suspects has been the victim of child abuse or neglect, must comply with the requirements of this law. However, a clergy member who acquires knowledge or reasonable suspicion of child abuse or neglect during a "penitential communication" is not required to report. A **"penitential communication"** means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member, who in the course of the discipline or practice of his or her church, denomination or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs or practices of his or her church, denomination or organization, has a duty to keep those communications secret. This exception must not be construed to modify or limit a clergy member's duty to report known or suspected child abuse or neglect when he or she is acting in some other capacity that would otherwise make the clergy member a mandated reporter [Penal Code Section 11166(d)]. A custodian of records of a clergy member is also a mandated reporter.

Although hospital volunteers (and other volunteers, except volunteers of a Court Appointed Special Advocate Program) are not mandated reporters, the law encourages volunteers who have contact with children to obtain training in the identification and reporting of child abuse and to report known or suspected instances of child abuse to agencies specified under the law to receive such reports [Penal Code Section 11165.7(b)].

The law also strongly encourages employers to provide their employees who are mandated reporters with training in child abuse and neglect identification and training in child abuse and neglect reporting. Whether or not employers provide their employees with training in child abuse and neglect identification and reporting, the employers shall provide their employees who are mandated reporters with the required notice of their status as a mandated reporter (*see K. "Employer Obligation to Secure Employees' Acknowledgment of Reporting Obligations" page 19.16*).

VOLUNTARY REPORTERS

Penal Code Section 11166(g) permits, but does not require, reporting from any other person (who is not a mandated reporter) who has knowledge of or reasonably suspects a child has been the victim of child abuse or neglect [Penal Code 11166(g)].

SELECTION OF A PERSON TO REPORT

Reporting the information regarding possible child abuse to a supervisor, employer, coworker or other person is not a substitute for reporting to a law enforcement agency. However, in a hospital or clinic, two or more mandated reporters may become jointly aware of the same instance of reportable child abuse or neglect. Penal Code Section 11166(h) allows the team to select, by mutual agreement, a single member who will be responsible for making the telephone report and making and signing the written report. However, if any member of the team knows the designated member failed to report, he or she must thereafter make the report.

The statute allows the hospital or clinic to create internal procedures to facilitate reporting and apprise supervisors and administrators of reports. These procedures must be consistent with the law. No supervisor or administrator may impede or inhibit child abuse reporting, and employees must not be subject to sanctions for making a report. [Penal Code 11166(i)(1)] Reporting information about child abuse to an employer, supervisor, school principal, school counselor, coworker or other person is not a substitute for making a mandated report to the appropriate law enforcement agency [Penal Code Section 11166(i)(3)].

The internal procedures must not require an employee required to make reports by the statute to disclose his or her identity to the employer [Penal Code Section 11166(i)(2)].

C. REPORTS TO LAW ENFORCEMENT

A telephone report, followed by a written report, must be made to any police department (not including a school district police or security department), sheriff's department, county probation department (if designated by the county to receive child abuse reports) or the county welfare department. Agencies that are required to receive child abuse reports may not refuse to accept them. They must maintain a record of all reports received. [Penal Code Section 11165.9]

CONTENT OF REPORT

Reports of suspected child abuse or neglect must include the following information [Penal Code Section 11167]:

1. The name, business address and telephone number of the mandated reporter, and the capacity that makes the person a mandated reporter.

   If the person is not a mandated reporter, he or she is not required to include his or her name [Penal Code Section 11167(f)]. If the name is given, the person's identity is confidential and may be disclosed only in limited circumstances.

2. The information that gave rise to the reasonable suspicion of child abuse or neglect and the source or sources of that information.

If a report is made, the following information, if known, shall also be included in the report:

1. The child's name, address and present location, and, if applicable, the child's school, grade and class.
2. The names, addresses and telephone numbers of the child's parents or guardians.
3. The name, address, telephone number and other relevant personal information about the person or persons who might have abused or neglected the child.

A mandated reporter may include with the report any nonprivileged documentary evidence related to the incident [Penal Code Section 11166(a)]. *(See F. "Privileges Inapplicable," page 19.14)*

The mandated reporter shall make a report even if some of this information is not known or is uncertain to him or her.

HOW REPORTS ARE MADE

An initial telephone report must be made immediately or as soon as is practically possible after receiving the information concerning the incident [Penal Code Section 11166(a)].

A written follow-up report must be sent by mail, facsimile, or email to the law enforcement agency within 36 hours of receiving the information concerning the incident.

On occasion a mandated reporter may attempt to make an initial telephone report to the appropriate law enforcement agency, but the law enforcement agency refuses to take the report. If this happens, the mandated reporter must, immediately or as soon as practicably possible, make a one-time automated written report by fax or email to the state Department of Justice. The Department of Justice will develop a form for this purpose. The mandated reporter must be available to respond to a telephone follow-up call by the Department of Justice. If a report to the Department of Justice is made, the mandated reporter does not need to make the usual follow-up written report to the law enforcement agency that refused to take the initial telephone report. [Penal Code Section 11166(b)]

Required Form

The state Department of Justice has adopted "Suspected Child Abuse Report," form SS 8572, which must be used for the written report. The multi-part form may be obtained from the local social services department or child protective services agency. (The form may be downloaded at www.caag.state.ca.us/childabuse/forms.htm.)

Procedure

The person or the team member designated to report should fill in and sign the written report. The same person should make both the telephone and the written report.

The form should be forwarded to the hospital administrator (or his or her designated representative) for sending.

Medical Report Required

A medical professional who examines a child for physical injury or for sexual assault that is suspected child abuse must complete a medical report within 36 hours of receiving the information concerning the incident. This medical report should be submitted along with "Suspected Child Abuse Report," form SS 8572. This medical report should be one of the following: "Medical Report—Suspected Child Abuse" (DOJ 900) or one of the forms described in V. "Sexual Assault and Rape," page 19.5.

Penal Code Section 13823.5 requires that a medical exam relating to sexual assault must be made on standard forms adopted by the Office of Emergency Services (OES), formerly the Office of Criminal Justice Planning. That office developed the forms described in V. "Sexual Assault and Rape," page 19.5. Therefore, when there is evidence of child sexual abuse, one of these forms *must* be used. When no sexual abuse is indicated, form DOJ 900 is the more appropriate form since it is better suited to gathering evidence of physical abuse or neglect.

For information about the forms or assistance in completing them, contact the University of California, Davis California Medical Training Center at (916) 734-4141.

D. DIAGNOSTIC X-RAYS PERMITTED WITHOUT PARENTAL OR GUARDIAN CONSENT

A physician or dentist (or their agents at their direction), may take skeletal X-rays of a child without the consent of the child's parent or guardian, but only for the purpose of diagnosing the case as one of possible child abuse or neglect and determining the extent of such child abuse or neglect [Penal Code Section 11171.2].

Additionally, if a peace officer in the course of investigation of child abuse or neglect has reasonable cause to believe that the child has been physically abused, the officer may apply to a magistrate for an order directing that the child be X-rayed without parental consent [Penal Code Section 11171.5]. X-rays performed pursuant to such an order must be performed by a physician or dentist or their agents. Reimbursement by the county for administrative costs of such X-rays will not exceed five percent of the cost of the X-rays.

A minor who is alleged to have been sexually assaulted may give consent to the furnishing of hospital, medical and surgical care related to the diagnosis and treatment of such condition. The consent of the minor's parent(s) or

guardian is not necessary. The professional person rendering the medical treatment must attempt to contact the minor's parents or guardian and note the date and time of such contact or, if unsuccessful, when the contact was attempted. The professional person need not make this contact if he or she reasonably believes that the parent(s) or guardian committed the sexual assault on the minor. [Family Code Section 6928(c)] *(See chapter 2 regarding who may legally consent to medical treatment for a minor patient.)*

E. SPECIAL INSTANCES

WHEN A CHILD SEEKS TREATMENT FOR A SEXUALLY TRANSMITTED DISEASE, PREGNANCY OR ABORTION

The pregnancy of a minor, in and of itself, does not constitute the basis for reasonable suspicion of child abuse [Penal Code Section 11166(a)]. Neither does, by itself, a request for birth control assistance [67 Ops.Cal.Atty.Gen. 235 (1984)], which a minor is legally authorized to obtain under Family Code Section 6925.

Notwithstanding the foregoing, child abuse reporting may be required when particular types of medical attention are rendered to a child *if there are additional facts indicating that the child was sexually assaulted* [67 Ops. Cal. Atty. Gen. 235 (1984)]. Thus, reporting may be required when a minor seeks treatment for a sexually transmitted disease or pregnancy or requests an abortion or birth control assistance and there is reasonable suspicion to believe that there has been a violation of the law amounting to sexual assault (as defined above). *See below for discussion of reports concerning children under age 14.*

Reasonable Suspicion

In *People v. Stockton Pregnancy Control Medical Clinic*, 203 Cal.App.3d 225, 239-240 (1988), which is discussed below, the court stated:

> The [Child Abuse and Neglect Reporting] Act makes clear that professionals subject to the Act must evaluate facts known to them in light of their training and experience to determine whether they have an objectively reasonable suspicion of child abuse. . . . However, nothing in the Act requires professionals such as health practitioners to obtain information they would not ordinarily obtain in the course of providing care or treatment. Thus, the duty to report must be premised on information obtained by the health practitioner in the ordinary course of providing care and treatment according to standards prevailing in the medical profession.

According to the California Attorney General [67 Ops.Cal.Atty.Gen. 235 (1984)], the facts to be used to evaluate whether there is reasonable suspicion to believe that a child who seeks care for a sexually transmitted disease, pregnancy or abortion was the victim of child abuse include:

1. The child's medical history;
2. Other information available to the professional through consultation or examination; and
3. Whether the child is immature or mentally deficient. Pregnancy in a mentally or physically impaired child or a retarded child does, according to the California Attorney General, raise a reasonable suspicion of child abuse.

Minors Under 14 Years of Age: Lewd and Lascivious Conduct Versus Statutory Rape

As noted above, the commission of a lewd or lascivious act upon a child under 14 years of age, which is a violation of Penal Code Section 288, constitutes sexual assault. In *Planned Parenthood Affiliates v. Van de Kamp*, 181 Cal.App.3d 245 (1986), the Court of Appeal held that no child abuse report need be made where the conduct involved is voluntary sexual activity between minors who are both under age 14 and are of a similar age. This ruling was affirmed in *People v. Stockton Pregnancy Control Medical Clinic*, supra, 203 Cal.App.3d at 234, where the court stated:

> In practical effect, the [Child Abuse and Neglect Reporting] Act, as construed in *Planned Parenthood*, exempts from reporting as "child abuse" the voluntary sexual conduct of sexually mature boyfriends and girlfriends (i.e., minors age 14 and older) and the conduct of younger children of similar ages who voluntarily play doctor or otherwise engage in sexual experimentation.

However, the appellate court in the *Stockton* case also held that a report of child abuse is still required where the sexual activity, even though voluntary, is between a minor under age 14 and a person of disparate age. This includes instances in which the other person is an adult or a minor age 14 or older. Penal Code Section 288(c)(1) clarifies that it is deemed an offense where lewd or lascivious acts are committed with a minor of 14 or 15 years and the defendant is at least 10 years older than the victim. Moreover, Penal Code Section 261.5 sets forth degrees of liability to sexual intercourse with a minor more than two years younger than the age of the perpetrator.

WHEN TREATING SUBSTANCE ABUSE

The federal laws regulating the disclosure of patient records maintained in connection with the treatment of substance abuse expressly permit the reporting under state law of incidents of suspected child abuse and neglect to appropriate state or local authorities [42 U.S.C. Section 290dd-2(e)] *(see chapter 18 regarding federal laws governing the confidentiality of substance abuse information).*

MATERNAL SUBSTANCE ABUSE

When a Report Must Be Made

Penal Code Section 11165.13 provides guidelines for the reporting of newborn infants with positive toxicology screens. The law specifies that a positive toxicology screen at the time of an infant's delivery is not in and of itself a sufficient basis for reporting child abuse or neglect. However, any indication of maternal substance abuse requires an assessment of the needs of the mother and child under Health and Safety Code Section 123605. If other factors are present that indicate risk to a child, then a report must be made. However, a report based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse must be made only to a county welfare or probation department and not to a law enforcement agency.

In *Ferguson et al. v. City of Charleston et al.*, 532 U.S. 67 (2001), the U.S. Supreme Court ruled that a state hospital's performance of a drug test to obtain evidence of a patient's criminal conduct for law enforcement purposes is an unreasonable search if the patient has not consented to the procedure. In that case, a state hospital worked with local law enforcement personnel to develop policies to identify and report pregnant drug users. Criteria for testing pregnant women were developed which, according to the court, were not sufficiently related to illegal drug use to constitute probable cause or even a basis for a reasonable suspicion. No search warrants were sought. Chain of custody procedures and documentation were developed to make sure test results could be used in subsequent criminal proceedings. The hospital policy set forth the range of possible criminal charges and the logistics of police notification and arrests. The policy did not discuss different courses of medical treatment for either the mother or infant. For purposes of this case, it was assumed that the women did not consent to the taking of the urine sample (although there were no allegations that the urine was forcibly removed), the testing of the urine for drugs, or the reporting of the positive result to law enforcement.

The court found that the focus of the policy was on the arrest and prosecution of drug-abusing mothers, not medical care. The court held that because the hospital is a state hospital, the members of its staff are government actors and subject to the Fourth Amendment prohibitions against unreasonable search and seizure. The court stated that when a hospital undertakes to obtain evidence from its patients for the specific purpose of incriminating those patients, the hospital has a special obligation to make sure that the patients are fully informed about their constitutional rights. The court remanded the case to a lower court to determine whether informed consent was given by the patients.

The court distinguished this case from circumstances in which physicians, in the course of ordinary medical procedures aimed at helping the patient, come across information that under rules of law or ethics is subject to reporting requirements. However, the court also stated that the "reasonable expectation of privacy enjoyed by the typical patient undergoing diagnostic tests in a hospital is that the results of those tests will not be shared with nonmedical personnel without her consent."

Government hospitals should work with their legal counsel to develop a drug testing policy that satisfies the concerns outlined by the court in the *Ferguson* case.

Needs Assessment

Pursuant to Health and Safety Code Section 123605, each county must establish protocols between county health departments, county welfare departments, and all public and private hospitals in the county regarding the application and use of an assessment of the needs of, and a referral for, a substance abuse exposed infant to a county welfare department pursuant to Penal Code Section 11165.13.

The assessment of needs must be performed by a health practitioner or a medical social worker. The needs assessment must be performed before the infant is released from the hospital.

The purpose of the needs assessment is to do the following:

1. Identify needed services for the mother, child or family, including, where applicable, services to assist the mother in caring for her child and services to assist maintaining children in their homes.
2. Determine the level of risk to the newborn upon release to the home and the corresponding level of services and intervention, if any, necessary to protect the newborn's health and safety, including a referral to the county welfare department for child welfare services.
3. Gather data for information and planning purposes.

SAFE SURRENDER OF A NEWBORN

The voluntary surrendering of a newborn in accordance with California's "safe surrender" law is not, in and of itself, a sufficient basis for reporting child abuse or neglect. *See chapter 10 for information about reporting child abuse in the context of a surrendered newborn.*

WITHDRAWAL OR WITHHOLDING OF LIFE-SUSTAINING TREATMENT IN A NEWBORN

See chapter 5 regarding the reporting of child abuse in the context of withdrawal or withholding of life-sustaining treatment in a newborn.

F. PRIVILEGES INAPPLICABLE

Neither the physician-patient privilege nor the psychotherapist-patient privilege applies to information that must be reported pursuant to child abuse reporting laws in a court proceeding or administrative hearing [Penal Code Section 11171.2]. In *People v. Stritzinger*, 34 Cal.3d 505 (1983), the California Supreme Court held that the child abuse or neglect reporting requirements supersede the psychotherapist-patient privilege, and that confidential information must be disclosed by a psychotherapist in order to fulfill the reporting requirements. However, the court also held that only the information which must be reported may be disclosed, and that a psychotherapist cannot disclose information received after the report was made if it pertains to the identical situation that was reported. *(See "When Treating Substance Abuse," page 19.12, regarding the protections that apply when the information is subject to the federal laws governing disclosure of substance abuse patient information.)* The California Attorney General has opined that the child abuse reporting requirements supersede the confidentiality provisions of the Lanterman-Petris-Short Act *(see chapter 17 regarding the Lanterman-Petris-Short Act requirements)* [65 Ops.Cal.Atty.Gen. 345 (1982)]. Facilities should consult their legal counsel regarding the scope of disclosure that is required by the child abuse reporting statute.

G. DISCLOSURE AND FOLLOW-UP PROCEDURES

DISCLOSURE TO INVESTIGATOR

Information relevant to the incident of child abuse or neglect may also be given to an investigator from an agency that is investigating a known or suspected case of child abuse or neglect [Penal Code Section 11167(b)]. However, the only information that may be disclosed is that which is relevant to the incident of child abuse or neglect. Thus, medical information regarding the involved persons (e.g., a suspected victim or perpetrator) should be disclosed only if it appears to satisfy this relevancy test.

Scope of Information to be Released

In *Ferraro v. Chadwick*, 221 Cal.App.3d 86 (1990), parents who were reported for child abuse sued the reporting hospital and physician alleging that statements made and information provided *after* the initial report of child abuse were outside the immunity provided under Penal Code Section 11172 *(see the discussion of immunity in G. "Immunity from Liability," page 19.15)*. In rejecting this argument, the court made several points relevant to the scope of permissible disclosure of information to investigators:

1. The type of report or communication contemplated by Section 11167(b) most often is going to occur *after* an initial report of suspected abuse.
2. Section 11167 anticipates that, in the course of an investigation into suspected abuse, the reporter ("particularly if the reporter is a doctor") is going to be contacted and interviewed by the agency conducting the investigation, and the law sanctions communications between the reporter and the investigating agency.
3. The child abuse reporting laws both authorize and protect these subsequent communications, regardless of whether they were in response to law enforcement inquiries or were initiated by the doctor and/or hospital.

These comments show that the court in *Ferraro* obviously considered release of information under Penal Code Section 11167(b) to be authorized reports under the immunity statute. However, the only information that may be disclosed is information that *is relevant to the incident of suspected abuse*. Thus, medical information regarding the involved persons, whether a suspected victim or perpetrator, should be disclosed under this provision only if it appears to satisfy this relevancy test.

If the information being requested does not appear to meet this test, then the law enforcement officers should be asked to obtain a court order or search warrant. As the California Attorney General points out in its *Child Abuse Prevention Handbook* (revised January 2000) (p. 56):

> As in all areas of criminal law, all searches, seizures, and arrests made in the course of child abuse investigations must comply with the requirements of the Fourth Amendment.

Mental Health and Substance Abuse Information

There are also some restrictions that have particular application to mental health information *(see chapter 17 regarding laws governing the confidentiality of mental health information)*.

While the psychotherapist-patient privilege does not apply to information required to be reported pursuant to the statute, at least one court has ruled that the privilege continues to apply to information not required to make the report. In *People v. Stritzinger*, 34 Cal.3d 505 (1983), the court ruled that while a psychotherapist was required to disclose privileged information in order to make a child abuse report, the psychotherapist should *not* have disclosed information received after the report was made that did not disclose new incidents of abuse.

In addition, the California Attorney General has stated its view that while the child abuse reporting laws override the Lanterman-Petris-Short confidentiality law for mental health information, it does so only to permit persons to report "what they know or have observed" [65 Ops.Cal.Atty.Gen 345, 355 (1982)]. According to the Attorney General's opinion, the reporting law does not give child protection agencies direct access to mental health

records and information protected by the Lanterman-Petris-Short Act.

Similarly, the federal law regarding the confidentiality of substance abuse information provides an exception to confidentiality in order to report incidents of suspected child abuse [42 U.S.C. Section 290dd-2(e)]. However, this exception does not permit disclosure of the original substance abuse patient records except according to procedures set forth in 42 C.F.R. Section 2.12(c)(6) *(see chapter 18 regarding laws governing the confidentiality of substance abuse information).*

DISCLOSURE TO LICENSING AGENCY

Several provisions of the child abuse reporting law address the disclosure of information to various licensing agencies.

Information relevant to an incident of child abuse or neglect, including the investigation report and other pertinent materials may be given to the state Department of Social Services, or the county licensing agency which has contracted with the state for the performance of its services, when it is investigating a known or suspected case of child abuse or neglect [Penal Code Sections 11167(c), 11167.5(b)(6), 11170(b)(4)]. Interestingly, as used in the child abuse law, "licensing agency" does not appear to include the state Department of Health Services [*see Penal Code Section 11165.11 for the definition of "licensing agency"*].

H. IMMUNITY FROM LIABILITY

MANDATED REPORTERS

No mandated reporter shall incur any civil or criminal liability as a result of making a report required or authorized by the child abuse reporting law, and this immunity shall apply even if the mandated reporter acquired the knowledge or reasonable suspicion of child abuse or neglect outside of his or her professional capacity or outside the scope of his or her employment. [Penal Code Section 11172]

Two court decisions have emphasized that this immunity for persons required by law to make reports of suspected abuse is absolute—that is, the immunity applies regardless of whether or not the person making the report knew or should have known that the report was not true [*Krikorian v. Barry*, 196 Cal.App.3d 1211 (1987); *Storch v. Silverman*, 186 Cal.App.3d 671 (1986)]. Additionally, the immunity applies not only to the person who makes the report (i.e., telephones the agency and submits the written report) but to any other mandated reporter involved in the identification of an instance of child abuse even though they did not personally report it to the authorities [*Storch v. Silverman*, supra, 186 Cal.App.3d at 681]. This recognizes that in many instances, especially in hospitals, the discovery of child abuse will be a collaborative event, involving more than one person.

In *Krikorian v. Barry*, supra, 196 Cal.App.3d at 1223, the court held that Penal Code Section 11172 immunity encompasses not only the actual act of reporting but also "conduct giving rise to the obligation to report, such as the collection of data, or the observation, examination r treatment of the suspected victim or perpetrator of child abuse, performed in a professional capacity or within the scope of employment. . . ." [Accord, *McMartin v. Children's Institute International*, 212 Cal.App.3d 1393 (1989), cert. den., 494 U.S. 1057 (1990)] In *Ferraro v. Chadwick*, 221 Cal.App.3d 86 (1990) and *Thomas v. Chadwick*, 224 Cal.App.3d 813 (1990) modified, 224 Cal.App.3d 1637, the courts ruled that persons required to make reports are immunized not only for activity related to the initial mandated report but also with respect to activity after the initial report that is authorized under the child abuse reporting law.

VOLUNTARY REPORTERS

Penal Code Section 11172 also provides that any other person reporting a suspected instance of child abuse or neglect (i.e., those making voluntary reports) shall not incur civil or criminal liability as a result of making the report unless it can be proved that the report was false and that the person knew it was false or that the report was made with reckless disregard of its truth or falsity. In such a case, the person making the report is liable for any damages caused [Penal Code Section 11172(a)].

ATTORNEYS' FEES

In addition, the California Legislature recognized that while the immunity from liability prevents imposition of liability, it cannot prevent the filing of a lawsuit against a person who reports. Thus, to limit the financial hardship that persons may incur as a result of fulfilling their legal reporting responsibilities, the law allows any person who is sued as a result of fulfilling his or her mandatory reporting obligation to recover from the state the attorneys' fees spent defending the action, if the person prevails. The state is required to reimburse the person for reasonable attorneys' fees at hourly rates based upon the rates charged by the California Attorney General, up to $50,000 [Penal Code Section 11172(c)]. A claim may be filed with the California Victim Compensation and Government Claims Board.

IMMUNITY FOR PROVIDING ACCESS TO THE VICTIM

Health practitioners and other persons are also granted immunity from civil or criminal liability for providing access to a suspected or known victim of child abuse or neglect to a government agency investigating a report of

suspected child abuse or neglect [Penal Code Section 11172(b)].

IMMUNITY FOR PHOTOGRAPHING OF SUSPECTED ABUSE

Penal Code Section 11172 further provides that no person required to make a report pursuant to that provision, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of child abuse or neglect, or causing photographs to be taken of a suspected victim of child abuse or neglect, without parental consent, or for disseminating such photographs with the reports required by statute. However, this law shall not be construed to grant immunity from liability with respect to any other use of such photographs [Penal Code Section 11172(a)].

The health care provider may wish to obtain photographs to assist the investigating agency and to provide documentation should a question arise in the future concerning the justification for any report made by the hospital.

I. CONFIDENTIALITY OF REPORTS

Reports of child abuse and the information contained in them, as well as certain child abuse or neglect investigative reports, are confidential and may be disclosed only as provided by statute [Penal Code Section 11167.5(a)]. Those to whom the statute permits disclosure include various law enforcement and governmental agencies, coroners and medical examiners, multidisciplinary teams, hospital scan teams, agencies responsible for licensing facilities that care for children, adoption agencies, and others as specified. [*See Penal Code Sections 11167 – 11170.5.*] Such disclosures should typically be made by the agency to which the original report is made and not by initial reporters.

The identity of all persons who make child abuse reports is confidential and disclosed only among agencies receiving or investigating mandated reports, to the prosecutor in a criminal prosecution or in an action initiated under Welfare and Institutions Code Section 602 arising from alleged child abuse, or to counsel appointed to represent the child pursuant to subdivision (c) of Section 317 of the Welfare and Institutions Code, or to the county counsel or prosecutor in a proceeding under Family Code Section 7800 *et seq.* or Welfare and Institutions Code Section 300 *et seq.*, or to a licensing agency when abuse or neglect in out-of-home care is reasonably suspected, or when those persons waive confidentiality, or by court order. No such agency or person may disclose the identity of any person who makes a child abuse report to that person's employer, except with the employee's consent or by court order. [Penal Code Section 11167(d).]

Notwithstanding these confidentiality requirements, a representative of a child protective services agency performing an investigation that results from a report of suspected child abuse or neglect made pursuant to the child abuse reporting law, at the time of the initial contact with the individual who is subject to the investigation, shall advise the individual of the complaints or allegations against him or her, in a manner that is consistent with the requirement to protect the identity of the reporter. [Penal Code Section 11167(e).]

Violation of this confidentiality is a misdemeanor punishable by imprisonment in a county jail not to exceed six months, by a fine of five hundred dollars ($500), or by both that imprisonment and fine. [Penal Code Section 11167.5(a).]

J. SANCTIONS FOR A FAILURE TO REPORT

A person who is required to, but fails to report an instance of known or reasonably suspected child abuse or neglect may be found guilty of a misdemeanor. The punishment may include up to six months imprisonment in the county jail, a fine of up to $1,000, or both [Penal Code Section 11166(c)]. A supervisor or administrator who impedes or inhibits an employee's reporting of child abuse may be subject to up to six months imprisonment in the county jail or a fine not to exceed $1,000, or both. A mandated reporter who willfully fails to report abuse or neglect, or a person who impedes or inhibits a report of abuse or neglect, where that abuse or neglect results in death or great bodily injury, will be punished by not more than one year in a county jail, a fine of up to $5,000, or both [Penal Code Section 11166.01] The statutory provisions do not affect the principle established in *Landeros v. Flood*, 17 Cal.3d 399 (1976), which imposes civil liability for a failure to report child abuse *(see "Civil Liability," page 19.2)*.

If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until an agency specified in Section 11165.9 discovers the offense [Penal Code Section 11166(c)].

K. EMPLOYER OBLIGATION TO SECURE EMPLOYEES' ACKNOWLEDGMENT OF REPORTING OBLIGATIONS

Hospitals and other employers of mandated reporters are required to provide forms on which the mandated reporters acknowledge that they are aware of the child abuse and neglect reporting requirements and will comply with them. The form must inform the employee that he or she is a mandated reporter and inform the employee of his or her reporting obligations under Penal Code Section 11166 and of his or her confidentiality rights under Penal Code Section 11167(d). The employer must provide a copy of Penal Code Sections 11165.7, 11166 and 11167 to the employee. These statements must be retained by the employer. The employer must bear the costs of printing,

distributing and filing the acknowledgment forms [Penal Code Section 11166.5].

The statements must be signed by any person hired after Jan. 1, 1985, who is required to report.

Because this requirement applies only to employees hired by a hospital, it does not apply specifically to medical staff members who have no employment relationship with the hospital. However, hospitals may choose to have medical staff members acknowledge their awareness of their obligations to report suspected instances of child abuse or neglect, particularly if the medical staff members may be treating possible victims of child abuse who present themselves to the emergency room.

The hospital may supplement its form by discussing any special policy it has regarding notifying supervisors and administration about reports that will be or are made, and how the reporting is coordinated when several employees become aware of the same instance of suspected child abuse or neglect. Hospitals may use "Employee Acknowledgment of Child Abuse Reporting Obligations," (CHA Form 19-2) for this purpose.

VII. ABUSE OF ELDERS AND DEPENDENT ADULTS

The Elder Abuse and Dependent Adult Civil Protection Act [Welfare and Institutions Code Sections 15600-15659] imposes mandatory reporting requirements for abuse of elders and dependent adults. The reporting requirements for elders and dependent adults are identical. Abuse of an elder or dependent adult is a criminal act. [Penal Code Section 368]

Under the law, any mandated reporter who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be abuse, or is told by an elder or dependent adult that he or she has experienced behavior, including an act or omission, constituting abuse, shall report the known or suspected instance of abuse by telephone immediately or as soon as practicably possible, and by written report sent within two working days.

Abuse of an elder or a dependent adult includes physical abuse, neglect, financial abuse, abandonment, isolation, abduction or other treatment with resulting physical harm or pain or mental suffering, or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering [Welfare and Institutions Code Section 15610.07]. Abuse does not include the use of any reasonable and necessary force that may result in an injury used by a peace officer acting within the course of his or her employment as a peace officer [Penal Code Section 11174.4].

Elders are persons 65 years of age or older. Dependent adults are persons between ages 18 and 64 with physical or mental limitations such as physical or developmental disabilities or age-diminished physical or mental abilities. The law also expressly states that *any person between the ages of 18 and 64 who is admitted as an inpatient* in an acute care hospital or other 24-hour health facility is a dependent adult. *(See Welfare and Institutions Code Sections 15610.23 and 15610.27 for definitions of relevant facilities).*

A. DEFINITIONS

"Abandonment" means the desertion or willful forsaking of an elder or dependent adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody [Welfare and Institutions Code Section 15610.05].

"Abuse of an elder or a dependent adult" means physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering, or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering [Welfare and Institutions Code Section 15610.07].

"Adult protective services agency" means a county welfare department, except persons who do not work directly with elders or dependent adults as part of their official duties, including members of support staff and maintenance staff [Welfare and Institutions Code Section 15610.13].

"Care custodian" means an administrator or an employee of any of specified public or private facilities or agencies, or persons providing care or services for elders or dependent adults, including members of the support staff and maintenance staff [Welfare and Institutions Code Section 15610.17]. These facilities and agencies include the following: 24-hour health facilities as defined in Health and Safety Code Sections 1250, 1250.2 and 1250.3; clinics; home health agencies; agencies providing publicly funded in-home supportive services, nutrition services, or other home and community-based support services; adult day health care centers and adult day care; Alzheimer's Disease day care resource centers; community care facilities as defined in Health and Safety Code Section 1502; residential care facilities for the elderly as defined in Health and Safety Code Section 1569.2; respite care facilities; and other protective, public, sectarian, mental health, or private assistance or advocacy agencies and persons providing health services or social services to elders or dependent adults. *(See Welfare and Institutions Code Section 15610.17 for a complete list of "care custodians.")*

"Clergy member" means a priest, minister, rabbi, religious practitioner or similar functionary of a church, synagogue, temple, mosque or recognized religious denomination or organization. "Clergy member" does not include unpaid volunteers whose principal occupation or vocation does not involve active or ordained ministry in a

church, synagogue, temple, mosque or recognized religious denomination or organization, and who periodically visit elder or dependent adults on behalf of that church, synagogue, temple, mosque or recognized religious denomination or organization. [Welfare and Institutions Code Section 15610.19]

"Dependent adult" means a person between the ages of 18 and 64 who resides in California and who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights, including (but not limited to) persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. "Dependent adult" also expressly includes any person between the ages of 18 and 64 who is admitted as an inpatient in an acute care hospital or other 24-hour health facility as defined in Health and Safety Code Sections 1250, 1250.2 and 1250.3 [Welfare and Institutions Code Section 15610.23].

"Elder" means a person 65 years of age or older [Welfare and Institutions Code Sections 15610.27].

"Endangered adult" means a dependent or elder adult who is at immediate risk of serious injury or death, due to suspected abuse or neglect and who demonstrates the inability to take action to protect himself or herself from the consequences of remaining in that situation or condition [Welfare and Institutions Code Section 15701.25].

"Financial abuse" occurs when a person or entity takes, secretes, appropriates or retains (or assists another to do so) real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both. A person or entity shall be deemed to have taken, secreted, appropriated or retained for a wrongful use if, among other things, the person did so in bad faith. A person or entity shall be deemed to have acted in bad faith if the person knew or should have known that the elder or dependent adult had the right to have the property transferred or made readily available to the elder or dependent adult or to this or her representative. A representative is a conservator, trustee or other representative of the estate of an elder or dependent adult, or an attorney-in-fact acting within the authority of the power of attorney. [Welfare and Institutions Code Section 15610.30]

"Goods and services necessary to avoid physical harm or mental suffering" include, but are not limited to, all of the following [Welfare and Institutions Code Section 15610.35]:

1. The provision of medical care for physical and mental health needs.
2. Assistance in personal hygiene.
3. Adequate clothing.
4. Adequately heated and ventilated shelter.
5. Protection from health and safety hazards.
6. Protection from malnutrition, under those circumstances where the results include, but are not limited to, malnutrition and deprivation of necessities or physical punishment.
7. Transportation and assistance necessary to secure any of the needs set forth above.

"Health practitioner" includes a physician; psychiatrist; psychologist; dentist; resident; intern; podiatrist; chiropractor; licensed nurse; dental hygienist; licensed clinical social worker or associate clinical social worker; associate clinical marriage and family therapist; any other person who is currently licensed under Business and Professions Code Section 500 *et seq.*; emergency medical technician I or II; paramedic; person certified pursuant to Health and Safety Code Section 1797 *et seq.*; psychological assistant registered pursuant to Business and Professions Code Section 2913; marriage and family therapist trainee, as defined in Business and Professions Code Section 4980.03; or unlicensed marriage and family therapist intern registered under Business and Professions Code Section 4980.44; state or county public health or social service employee who treats an elder or a dependent adult for any condition; or a coroner [Welfare and Institutions Code Section 15610.37].

"Imminent danger" means a substantial probability that an elder or dependent adult is in imminent or immediate risk of death or serious physical harm, through either his or her own action or inaction, or as a result of the action or inaction of another person [Welfare and Institutions Code Section 15610.39].

"Isolation" means any of the following [Welfare and Institutions Code Section 15610.43]:

1. Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or dependent adult from receiving his or her mail or telephone calls.
2. Telling a caller or prospective visitor that an elder or dependent adult is not present, or does not wish to talk with the caller, or does not wish to meet with the visitor where the statement is false, is contrary to the express wishes of the elder or dependent adult, whether he or she is competent or not, and is made for the purpose of preventing the elder or dependent adult from having contact with family, friends or concerned persons.
3. False imprisonment, as defined in Penal Code Section 236.
4. Physical restraint of an elder or dependent adult for the purpose of preventing him or her from meeting with visitors.

These acts are subject to a rebuttable presumption that they do not constitute isolation if they are performed pursuant to the instructions of a physician licensed to practice medicine in California, who is caring for the elder or dependent adult at the time the instructions are given, and who gives the instructions as part of his or her medical care.

Also, these acts shall not constitute isolation if they are performed in response to a reasonably perceived threat of danger to property or physical safety.

"Local law enforcement agency" means a city police or county sheriff's department, or a county probation department, except persons who do not work directly with elders or dependent adults as part of their official duties, including members of support staff and maintenance staff [Welfare and Institutions Code Section 15610.45].

"Long term care facility" means any of the following [Welfare and Institutions Code Section 15610.47]:

1. A long term health care facility, as defined in Health and Safety Code Section 1418(a).
2. A community care facility, as defined in Health and Safety Code Section 1502(a), whether licensed or unlicensed.
3. A swing bed in an acute care facility, or an extended care facility.
4. An adult day health care facility as defined in Health and Safety Code Section 1570.7(b).
5. A residential care facility for the elderly as defined in Health and Safety Code Section 1569.2.

"Long term care ombudsman" means the State Long-Term Care Ombudsman, local ombudsman coordinators, and other persons currently certified as ombudsmen by the Department of Aging as described in Welfare and Institutions Code Section 9700 *et seq.* [Welfare and Institutions Code Section 15610.50].

"Mental suffering" means fear, agitation, confusion, severe depression or other forms of serious emotional distress that is brought about by forms of intimidating behavior, threats, harassment or by deceptive acts performed or false or misleading statements made with malicious intent to agitate, confuse, frighten or cause severe depression or serious emotional distress of the elder or dependent adult [Welfare and Institutions Code Section 15610.53].

"Neglect" means:

1. The negligent failure of a person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise; or
2. The negligent failure of an elder or dependent adult to exercise that degree of self care that a reasonable person in a like position would exercise.

Neglect includes, but is not limited to, all of the following [Welfare and Institutions Code Section 15610.57]:

1. Failure to assist in personal hygiene, or in the provision of food, clothing or shelter.
2. Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.
3. Failure to protect from health and safety hazards.
4. Failure to prevent malnutrition or dehydration.

If a person cannot provide the above for himself or herself due to poor cognitive functions, mental limitation, substance abuse or chronic poor health, this also constitutes neglect.

"Physical abuse" means all of the following, as these terms are defined in the Penal Code [Welfare and Institutions Code Section 15610.63]:

1. Assault.
2. Battery.
3. Assault with a deadly weapon or force likely to produce great bodily injury.
4. Unreasonable physical constraint, or prolonged or continual deprivation of food or water.
5. Sexual assault, which means any of the following:
   - Sexual battery.
   - Rape.
   - Rape in concert.
   - Spousal rape.
   - Incest.
   - Sodomy.
   - Oral copulation.
   - Sexual penetration.
   - Lewd or lascivious act.
6. Use of a physical or chemical restraint or psychotropic medication under any of the following conditions:
   - For punishment.
   - For a period significantly beyond that for which the restraint or medication is authorized by a physician licensed in California who is providing medical care to the elder or dependent adult at the time the instructions are given.

- For any purpose not authorized by the physician.

"Reasonable suspicion" means an objectively reasonable suspicion that a person would entertain, based upon facts that could cause a reasonable person in a like position, drawing when appropriate upon his or her training and experience, to suspect abuse [Welfare and Institutions Code Section 15610.65].

B. MANDATORY REPORTING OF ABUSE

Certain categories of persons, referred to as mandated reporters, are *required* to report any suspected abuse, as defined, of elders or dependent adults.

MANDATED REPORTERS

Persons required to report elder or dependent adult abuse are:

1. Elder or dependent adult "care custodians" *(see definition on page 19.17; any employee of a hospital is a "care custodian").*
2. Health practitioners
3. Clergy members
4. Employees of a county adult protective services agency or local law enforcement agency
5. Any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not that person receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults [Welfare and Institutions Code Section 15630(a)].

Exception

A mandated reporter who is a clergy member who acquires knowledge or reasonable suspicion of elder or dependent adult abuse during a penitential communication is not required to report. **"Penitential communication"** means a communication that is intended to be in confidence, including, but not limited to, a sacramental confession made to a clergy member who, in the course of the discipline or practice of his or her church, denomination or organization is authorized or accustomed to hear those communications and under the discipline, tenets, customs or practices of his or her church, denomination or organization, has a duty to keep those communications secret.

However, this exception does not modify or limit a clergy member's duty to report known or suspected elder and dependent adult abuse when he or she is acting in the capacity of a care custodian, health practitioner or employee of an adult protective agency.

A clergy member who is not regularly employed on either a full-time or part-time basis in a long-term care facility or does not have care or custody of an elder or dependent adult is not required to report abuse or neglect that is not reasonably observable or discernible to a reasonably prudent person having no specialized training or experience in elder or dependent care.

SUSPECTED ABUSE

A report must be made by a mandated reporter who, in his or her professional capacity or within the scope of his or her employment [Welfare and Institutions Code Section 15630(b)]:

1. Has observed or has knowledge of an incident that reasonably appears to be physical abuse, abandonment, abduction, isolation, financial abuse or neglect; or
2. Is told by an elder or dependent adult that he or she has experienced behavior, including an act or omission, constituting physical abuse, abandonment, abduction, isolation, financial abuse or neglect; or
3. Reasonably suspects abuse.

However, a physician, registered nurse or psychotherapist as defined in Evidence Code Section 1010 need not report an incident where all of the following conditions exist.

1. The mandated reporter has been told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, abandonment, abduction, isolation, financial abuse or neglect.
2. The mandated reporter is not aware of any independent evidence that corroborates the statement that the abuse has occurred.
3. The elder or dependent adult has been diagnosed with a mental illness or dementia, or is the subject of a court-ordered conservatorship because of a mental illness or dementia.
4. The physician, registered nurse or psychotherapist as defined in Evidence Code Section 1010 reasonably believes, in the exercise of clinical judgment, that the abuse did not occur.

(See chapter 16, VIII. "Release of Information Pursuant to Subpoena," for a list of which mental health professionals are considered "psychotherapists" pursuant to Evidence Code 1010.)

A mandated reporter does not have a duty to investigate a known or suspected incident of abuse. In fact, criminal liability may arise where a mandated reporter undertakes an investigation and determines that no report is needed [*People v. Davis*, 126 Cal. App. 4th 1416 (2005)]. It is up to the mandated reporter to report the facts giving rise to the suspicion of abuse, and it is up to law enforcement to investigate and determine whether abuse occurred.

In a long-term care facility, a mandated reporter need *not* report an incident where all of the following conditions exist.

1. The mandated reporter is aware that there is a proper plan of care.
2. The mandated reporter is aware that the plan of care was properly provided or executed.
3. A physical, mental or medical injury occurred as a result of care provided pursuant to the above.
4. The mandated reporter reasonably believes that the injury was not the result of abuse.

This exception applies only to those categories of mandated reporters that the state Department of Health Services determines have access to plans of care and have the training and experience necessary to determine whether the conditions specified have been met. A mandated reporter in a long-term care facility is not required to seek, nor precluded from seeking, information regarding a known or suspected incident of abuse prior to reporting.

TO WHOM REPORTS ARE MADE

1. If the suspected or alleged abuse has occurred in a long-term care facility, except a state mental health hospital or a state developmental center, the report must be made to the local ombudsperson or the local law enforcement agency.
2. If the suspected or alleged abuse has occurred in a state mental health hospital or a state developmental center, the report must be made to designated investigators of the State Department of Mental Health or the state Department of Developmental Services or to the local law enforcement agency.
3. If the suspected or alleged abuse has occurred in any other place other than one described in 1., the report must be made to the adult protective services agency or the local law enforcement agency.

C. NONMANDATORY REPORTING

In addition to the reports of abuse that must be made by mandated reporters, reports of other types of elder or dependent adult abuse may be made by any person, whether mandated reporters or other persons. Other forms of elder or dependent adult abuse may include intimidation, cruel punishment or other treatment that endangers an elder or dependent adult's emotional well-being. If a report is not required to be made under California law, then it may not be made by the patient's health care provider unless it also complies with federal privacy regulations, which require that:

1. The victim agrees to the disclosure; or
2. The health care provider, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the victim or other potential victims; or
3. If the victim is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the protected health information to be disclosed is not intended to be used against the victim and that an immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the victim is able to agree to the disclosure. [45 C.F.R. Section 164.512(c)]

BY MANDATED REPORTERS

If making the report satisfies the standards described above, then a mandated reporter may file a report where that person has knowledge of or reasonably suspects that types of elder or dependent adult abuse for which reports are not mandated have been inflicted on an elder or dependent adult or that the emotional well-being of an elder or dependent adult is endangered in any other way [Welfare and Institutions Code Section 15630(c)].

1. If the suspected abuse has occurred in a long-term care facility other than a state mental health hospital or a state developmental center, the report may be made to the long term care ombudsperson program.
2. If the suspected abuse has occurred in a state mental health hospital or a state developmental center, the report may be made to the designated investigator of the state Department of Mental Health or the state Department of Developmental Services, or to a local law enforcement agency or to the local ombudsperson.
3. If the suspected abuse has occurred in any other place, the report may be made to the county adult protective services agency.
4. If the conduct involves criminal activity not constituting abuse, it may also be immediately reported to the appropriate law enforcement agency, if such reporting complies with federal privacy regulations *(see chapters 16, 17 and 18).*

BY OTHER PERSONS

A person who is not a mandated reporter who knows or reasonably suspects that an elder or dependent adult has been the victim of abuse may report that abuse as follows [Welfare and Institutions Code Section 15631]:

1. If the abuse is alleged to have occurred in a long-term care facility, the report may be made to a long-term care ombudsperson program or local law enforcement agency.
2. If the abuse is alleged to have occurred in any place other than a long-term care facility, the report may be made to the county adult protective services agency or local law enforcement agency.

However, the federal privacy requirements described in C. "Nonmandatory Reporting," above, must be met before a report may be made by the victim's health care provider.

D. MAKING REPORTS

TELEPHONE REPORT

A telephone report must be made immediately or as soon as practicably possible after receiving the information concerning the incident. Telephone reports should be made directly, not relayed through other hospital employees. The report must include, if known:

1. The name of the person making the report.

a) If the person is one who is not a mandated reporter, the person is not required to include his or her name [Welfare and Institutions Code Section 15633.5(d)].

b) If the name is given, the person's identity is confidential and disclosed only under limited circumstances.

2. The name and age of the elder or dependent adult.
3. The present location of the elder or dependent adult.
4. The names and addresses of family members or any other adult responsible for the elder's or dependent adult's care.
5. The nature and extent of the elder's or dependent adult's condition.
6. The date of the incident.
7. Any other information requested by the agency receiving the report, including information that led the person to suspect elder or dependent adult abuse.

[Welfare and Institutions Code Section 15630(e)]:

WRITTEN REPORT

Written reports must be sent to the appropriate agency within two working days of receiving the information concerning the incident [Welfare and Institutions Code Section 15630(b)]. Reports should be submitted on forms adopted by the state Department of Social Services [Welfare and Institutions Code Section 15658(a)]. The current form is "Report of Suspected Dependent Adult/Elder Abuse" (SOC 341). This form can be obtained from county adult protective services agencies, long-term care ombudsperson coordinators or at www.dss.cahwnet.gov/pdf/soc341.pdf.

SELECTION OF A PERSON TO REPORT

In the hospital, two or more people may become jointly aware of the same instance of reportable elder or dependent adult abuse. The law allows them to select, by mutual agreement, a single person who will be responsible for making the telephone report and for making and signing the written report. However, if one of these persons knows that the designated person has failed to report, that person must thereafter make the report [Welfare and Institutions Code Section 15630(d)].

The statute allows the hospital to create internal procedures to facilitate reporting, ensure confidentiality and apprise supervisors and administrators of reports. These procedures must make clear that reporting duties are individual, that no supervisor or administrator may impede or inhibit such reporting, and that a person is not subject to sanctions for making a report [Welfare and Institutions Code Section 15630(f)]. Any administrative procedures implemented must also maintain the confidentiality of the report.

NOTIFICATION TO PATIENT

The patient must be promptly informed that a report has been or will be made, unless:

1. The health care provider believes, in the exercise of professional judgment, that informing the patient would place him or her at risk of serious harm; or
2. The health care provider would be informing a personal representative, and the provider reasonably believes the personal representative is responsible for the abuse, neglect or other injury, and that informing the personal representative would not be in the best interests of the patient as determined by the provider in the exercise of professional judgment. [45 C.F.R. Section 164.512(c)]

Verbal notification to the patient is sufficient. A report must be made even if the patient objects. The health care provider may wish to suggest that the victim go to a protected environment due to the risk of the abuser's retaliation after the report is made.

E. SANCTIONS FOR A FAILURE TO REPORT

A person who is required to, but fails to report an instance of elder or dependent adult abuse may be found guilty of a misdemeanor. A person who impedes or inhibits a report may also be found guilty of a misdemeanor. The punishment may include up to six months imprisonment in the county jail, a fine of up to $1,000, or both. Any mandated reporter who willfully fails to report an instance of elder or dependent adult abuse, or impedes or inhibits a report, where that abuse results in death or great bodily injury, is punishable by not more than one year in a county jail or by a fine of up to $5,000 or both. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect, the failure to report is a continuing offense until a law enforcement agency specified in Welfare and Institutions Code Section 15630(b)(1) discovers the offense. [Welfare and Institutions Code Sections 15630(h).]

Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed six thousand dollars ($6,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years. If in the commission of this offense the victim suffers great bodily injury, as defined, the defendant shall receive an additional term in the state prison. [Penal Code Section 368]

F. IMMUNITY FROM LIABILITY

No care custodian, clergy member, health practitioner, mandated reporter of suspected financial abuse of an elder or dependent adult, or employee of an adult protective services agency or local law enforcement agency shall incur any civil or criminal liability as a result of making a report required or authorized by the statute. No other person reporting a suspected instance of dependent adult abuse shall incur civil or criminal liability as a result of making any report authorized by the law unless it can be proved that a false report was made and the person knew it was false [Welfare and Institutions Code Section 15634(a)].

PROVIDING ACCESS TO THE VICTIM

No care custodian, clergy member, health practitioner, mandated reporter of suspected financial abuse of an elder or dependent adult, or employee of an adult protective services agency or local law enforcement agency investigating a report of known or suspected elder or dependent adult abuse shall incur any civil or criminal liability for providing an adult protective services agency or local law enforcement agency with access to a victim of suspected or known dependent adult abuse, when done at the request of the agency [Welfare and Institutions Code Section 15634(b)].

PHOTOGRAPHING OF SUSPECTED ABUSE

No person required to make a report, nor any person taking photographs at his or her direction, shall incur any civil or criminal liability for taking photographs of a suspected victim of elder or dependent adult abuse, or causing photographs to be taken of such a victim, or for disseminating such photographs with the reports required by statute. However, the law does not confer immunity from liability with respect to any other use of such photographs [Welfare and Institutions Code Section 15634(a)].

If the hospital can do so, it may wish to obtain such photographs to provide documentation should a question arise in the future concerning the justification for any report made by hospital personnel.

ATTORNEYS' FEES

A care custodian, clergy member, health practitioner or employee of an adult protective services agency or local law enforcement agency who is sued as a result of making a report that is required or authorized under the statute may recover from the state the attorneys' fees spent defending against the action, if the person prevails. The state is required to reimburse the person for the reasonable attorneys' fees at hourly rates based upon the rates charged by the California Attorney General, up to $50,000 [Welfare and Institutions Code Section 15634(c)].

EMPLOYERS

The failure of any employee or other person associated with the employer to report physical abuse of elders or dependent adults or otherwise meet the requirements of the abuse reporting law is the sole responsibility of such person. The person's employer or facility shall incur no civil or other liability for the failure of these persons to comply with the abuse reporting law [Welfare and Institutions Code Section 15659(f)].

G. CONFIDENTIALITY OF REPORTS; DISCLOSURES

Reports of elder and dependent adult abuse are confidential and may be disclosed only as provided by statute [Welfare and Institutions Code Section 15633]. According to the statute, reports (and the information contained therein) may be disclosed only as follows:

1. To persons or agencies to whom disclosure of information of the identity of the reporter is permitted (see below).
2. Persons who are trained and qualified to serve on multidisciplinary personnel teams may disclose to one another information and records that are relevant to the prevention, identification or treatment of abuse of elderly or dependent adults. *(See Welfare and Institutions Code Section 18951.)*
3. Disclosure is not authorized by this statute if such disclosure is prohibited by any other applicable provision of state or federal law.

However, these disclosures may be made only if:

1. The victim agrees to the disclosure; or
2. The health care provider, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the victim or other potential victims; or

3. If the victim is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the protected health information to be disclosed is not intended to be used against the victim and that an immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the victim is able to agree to the disclosure. [45 C.F.R. Section 164.512(c)]

The identity of persons making reports is confidential and may be disclosed only among the following agencies or persons representing an agency:

1. An adult protective services agency.
2. A long-term care ombudsperson program.
3. A licensing agency.
4. A local law enforcement agency.
5. The office of the district attorney.
6. The office of the public guardian.
7. The probate court.
8. The bureau.
9. The Department of Consumer Affairs, Division of Investigation.
10. Counsel representing an adult protective services agency.

The identity of a person who reports under this law may also be disclosed under the following circumstances:

1. To the district attorney in a criminal prosecution.
2. When a person reporting waives confidentiality.
3. By court order.

[Welfare and Institutions Code Section 15633.5].

In addition, a health care provider may, upon written request, disclose otherwise confidential medical information, to an elder death review team in certain circumstances *(see chapters 16 and 17)*.

[Penal Code Section 11174.8]

H. EMPLOYEES' ACKNOWLEDGMENT OF REPORTING OBLIGATIONS

Hospitals, and other employers of "health practitioners," "clergy members" and "care custodians," are required to provide forms on which persons hired for such positions acknowledge that they are aware of the elder and dependent adult abuse reporting requirements (specifically, Welfare and Institutions Code Section 15630) and will comply with them. A copy of Welfare and Institutions Code Section 15630 must be provided to each employee. These statements must be signed by the employee prior to commencing employment (for employees hired after Jan. 1, 1995). The signed statements must be retained by the employer. The law does not specify how long the statements must be retained; it is recommended that they be retained at least as long as the employee remains employed. [Welfare and Institutions Code Section 15659] A form developed by the state Department of Social Services may be used (SOC 341A) and can be downloaded at www.dss.cahwnet.gov/pdf/soc341A.pdf.

The hospital may supplement the acknowledgment and notice by discussing any special policy it has regarding notifying supervisors and administration about reports that will be or are made, and how the reporting is coordinated when several employees become aware of the same instance of suspected elder or dependent adult abuse.

I. EMPLOYER OBLIGATION TO TRAIN EMPLOYEES

Every long term care facility, (as defined in Health and Safety Code Section 1418), every community care facility (as defined in Health and Safety Code Section 1502), and every residential care facility for the elderly (as defined in Health and Safety Code Section 1569.2), that provides care to adults, must train its employees in recognizing and reporting elder and dependent adult abuse, as prescribed by the state Department of Justice. It is recommended that general acute care hospitals also provide this training.

These facilities must also provide all staff being trained a written copy of the reporting requirements and written notification of the staff's confidentiality rights under Welfare and Institutions Code Section 15633.5 *(see G. "Confidentiality of Reports; Disclosures," page 19.23)*. The "Employee Acknowledgment of Elder and Dependent Adult Abuse Reporting Obligations" (CHA Form 19-4) fulfills these requirements. Facilities may provide employees being trained a copy of the portion of the CHA *Consent Manual* that describes the California elder and dependent adult abuse reporting laws to comply with this requirement.

New employees must be trained within 60 days of the first day of employment. [Welfare and Institutions Code Section 15655]

The state Department of Justice, in cooperation with the state Department of Health Services and the state Department of Social Services has developed a minimal core training program that facilities may use.

J. DETENTION OF ENDANGERED ADULTS

Welfare and Institutions Code Section 15703.05 allows (but does not require) a physician treating an adult, if he/she determines that the adult is an endangered adult (defined in A. "Definitions," page 19.17), to delay the release of the endangered adult until:

1. A local law enforcement agency takes custody of the endangered adult;
2. It is determined by the responding agency that the adult is not an endangered adult; or
3. The responding agency takes other appropriate action to ensure the safety of the endangered adult.

This law applies whether or not medical treatment is required by the adult.

Welfare and Institutions Code Section 15703 also provides authorization to law enforcement officers, or other designated persons, to take an endangered adult into temporary emergency protective custody in certain circumstances for up to 72 hours. In such cases, the endangered adult must be taken to a hospital if medical evaluation and treatment is required.

During the 72-hour custody, the endangered adult will be transferred into an appropriate temporary residence while an investigation is conducted and a judicial hearing takes place. The temporary residence may include a hospital [Welfare and Institutions Code Section 15701.05]. Following the judicial hearing, the court may order the provision of protective services on an emergency basis for up to 14 days (excluding Saturdays, Sundays, and legal holidays). The court must specifically designate the approved services in the emergency order. An emergency order for protective services does not include hospitalization unless the court order specifically states otherwise. The emergency order will designate an appropriate temporary conservator of the endangered adult who will be responsible for the care of the endangered adult and who may consent for the provision of protective services, including health related services, for the endangered adult.

This law specifically states that it must not be used to circumvent the involuntary commitment process provided for in Welfare and Institutions Code Section 5150 *et seq.* [Welfare and Institutions Code Sections 15703-15705.40]. *(See chapter 12 regarding involuntary commitment laws.)*

VIII. INJURY OR CONDITION IN A PATIENT RECEIVED FROM A LICENSED HEALTH FACILITY RESULTING FROM NEGLECT OR ABUSE

A. STATUTORY DUTY OF HOSPITAL AND PHYSICIAN TO REPORT

Penal Code Section 11161.8 provides that a physician, surgeon and hospital administrator (or person in charge of the hospital ward in which the patient is received) must report by telephone and in writing within 36 hours to the local police and the county health department the fact of any patient *received from a health facility or community care facility* (as defined in Health and Safety Code Sections 1250 *et seq.* and 1502 *et seq.)*, who exhibits a physical injury or condition which, in the opinion of the examining physician, reasonably appears to be the result of neglect or abuse.

Although the initial justification for and apparent legislative intent was to require such reporting in cases of suspected neglect or abuse in patients received from nursing homes only, the present statutory language is much broader and requires reporting with respect to neglected or abused patients received from essentially any licensed health care facility or community care facility.

Determination of abuse must be made by a physician.

CONTENTS OF REPORT

Telephone and written reports must state the character and extent of the physical injury or condition.

Telephone Report

Although both the physician and hospital have an independent duty to report, a single telephone report will satisfy the statutory requirement for an oral report. It is recommended that the examining physician make the telephone report.

Written Report

The "Report of Injury or Condition Resulting from Neglect or Abuse to a Patient Received from a Licensed Health Facility" (CHA Form 19-3) has been developed to meet this reporting requirement. It is recommended that the form be completed and signed by the examining physician and then forwarded to the hospital administrator, or his or her designee, for signature and mailing to both the local police authority having jurisdiction and the county health department.

NOTIFICATION TO PATIENT

Except for victims of child abuse, the patient must be promptly informed that a report has been or will be made, unless:

1. The health care provider believes, in the exercise of professional judgment, that informing the patient would place him or her at risk of serious harm; or
2. The health care provider would be informing a personal representative, and the provider reasonably believes the personal representative is responsible for the abuse, neglect or other injury, and that informing the personal representative would not be in the best interests of the patient as determined by the provider in the exercise of professional judgment. [45 C.F.R. Section 164.512(c)]

Verbal notification to the patient is sufficient. A report must be made even if the patient objects.

B. REPORTING BY REGISTERED NURSES, LICENSED VOCATIONAL NURSES AND LICENSED CLINICAL SOCIAL WORKERS

Penal Code Section 11161.8 provides that a registered nurse, licensed vocational nurse or licensed clinical social worker employed at the admitting hospital may report to the local police authority and the county health department the fact that a patient received from a health facility or community care facility, (as defined in Health and Safety Code Sections 1250 and 1502), exhibits a physical injury or condition which, in the opinion of the nurse or social worker, reasonably appears to be the result of neglect or abuse. Reporting by such persons is not required by statute, and hence, statutory penalties for failure to report do not apply. Except for victims of child abuse, federal privacy regulations restrict the making of an optional report to situations in which:

1. The victim agrees to the disclosure; or
2. The health care provider, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the victim or other potential victims; or
3. If the victim is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the protected health information to be disclosed in not intended to be used against the victim and that an immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the victim is able to agree to the disclosure. [45 C.F.R. Section 164.512(c)]

No employee may be discharged, suspended, disciplined or harassed for making such a report.

C. IMMUNITY FROM LIABILITY

Penal Code Section 11161.8 provides that no person shall incur any civil or criminal liability as a result of making a report authorized by the law.

A Quick Reference Guide to ASSAULT AND ABUSE REPORTING REQUIREMENTS

	Child Abuse and Neglect	Elder/Dependent Adult Abuse	Injury by Firearm or Assaultive/ Abusive Conduct
When to Report	Mandated reporter has observed or has knowledge of a child whom he or she knows or reasonably suspects has been the victim of child abuse or neglect. May also report serious emotional damage or risk thereof (not required) **Includes:** non-accidental physical injury that was not self-inflicted; sexual abuse; neglect; willful harm, injury or endangerment; unlawful corporal punishment or injury; abuse or neglect in out-of-home care **Applies to:** minors age 18 and under **Note:** reporting of a minor's sexual activity varies with age and circumstances	Mandated reporter has observed or has knowledge of (including being told by the elder/dependant adult) an incident that reasonably appears to be abuse **Includes:** physical abuse, neglect, financial abuse, abandonment, isolation, abduction or other treatment with resulting physical harm or pain or mental suffering, or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering **Applies to:** elder persons age 65 or older; dependent adults ages 18 to 64 with physical or mental limitations; adult inpatients (age 18 to 64) in an acute care hospital or other 24-hour health facility	Health practitioner and physician providing medical services to a patient whom they reasonably suspect has a *physical* condition resulting from: 1. A wound or injury by a firearm (self-inflicted or by another person) or 2. A wound or injury resulting from assaultive or abusive conduct (as defined by Penal Code 11160(d)) **Includes:** murder, mayhem, assault, rape, battery, abuse of spouse or cohabitant and additional offenses as defined by Penal Code 11160(d) Duty to report applies even if treating a condition not related to the assault, abuse or firearm injury
To Whom to Report	Local law enforcement, designated county probation department or county welfare department	Varies depending on where the suspected/alleged abuse occurred: 1. **Long-term care facility:** report to local ombudsperson or local law enforcement 2. **State mental health hospital or state development center:** report to designated investigators at State Department of Mental Health, Department of Developmental Services, or local law enforcement 3. **Anywhere other than the above:** report to adult protective services agency or local law enforcement	Local law enforcement
Timeframe	1. Immediate telephone report 2. Follow up with written report by mail, fax or email within 36 hours	1. Immediate telephone report 2. Follow up with written report within two working days	1. Immediate telephone report 2. Follow up with written report within two working days
Required Form	"Suspected Child Abuse Report," Department of Justice, Form SS 8572. Obtain from local social services or child protective services agency or download at www.caag.state.ca.us/childabuse/forms.htm	"Report of Suspected Dependent Adult/Elder Abuse," state Department of Social Services, Form SOC 341, download at www.dss.cahwnet.gov/pdf/soc341.pdf	"Suspicious Injury Report," Office of Emergency Services (OES), Form OES 920, download at www.oes.ca.gov/Operational/OESHome.nsf/CJPD_Documents?OpenForm

Sexual Assault/Rape In addition to the above reporting requirements, each county must designate at least one general acute care hospital to perform forensic examinations on victims of sexual assault, including child molestation. Examination requires the consent of the patient (or parent or guardian). Local law enforcement must be notified by telephone prior to beginning the required medical examination. Proper forensic report forms may be downloaded at www.oes.ca.gov/Operational/OESHome.nsf/CJPD_Documents?OpenForm

See chapter 19, "Assault and Abuse Reporting Requirements" of the CHA *Consent Manual* for additional information.

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04/07

FORM 19-1

ASSAULT OR BATTERY AGAINST HOSPITAL PERSONNEL

(Hospital Letterhead)

(Date)

(Local Law Enforcement Agency Name)
(Address)

Dear ______________________________:

Pursuant to California Health and Safety Code Section 1257.7, we are reporting that an assault and/or battery against on-duty hospital personnel took place on *(date)* ____________________.

Check the following:

1. The incident ❑ did* ❑ did not result in injury to the employee.
2. The incident ❑ did* ❑ did not involve the use of a firearm or other dangerous weapon.

Please contact ______________________________ at ____ if you have any questions.

Sincerely,

(Signature)
(Name)
(Title)

* Report is required if this box is checked.

If the assault and/or battery did not result in injury to an employee and did not involve the use of a firearm or other dangerous weapon, the hospital is not required to make a report.

EMPLOYEE ACKNOWLEDGMENT OF CHILD ABUSE AND NEGLECT REPORTING OBLIGATIONS

Penal Code Sections 11165.7, 11166 and 11167 require specified health care practitioners and other persons who have knowledge of or observe a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse or neglect to report the known or suspected instance of child abuse immediately or as soon as practicably possible by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

You are a person who is required to report known or suspected child abuse or neglect. The reporting obligations that you must fulfill are described in Penal Code Sections 11165.7, 11166 and 11167 attached to this form. You must read this attachment.

The identity of all persons who make child abuse reports is confidential and disclosed only among agencies receiving or investigating mandated reports, to the prosecutor in a criminal prosecution or in an action initiated under Welfare and Institutions Code Section 602 arising from alleged child abuse, or to counsel appointed to represent the child pursuant to subdivision (c) of Section 317 of the Welfare and Institutions Code, or to the county counsel or prosecutor in a proceeding under Family Code Section 7800 *et seq.* or Welfare and Institutions Code Section 300 *et seq.*, or to a licensing agency when abuse or neglect in out-of-home care is reasonably suspected, or when those persons waive confidentiality, or by court order. No such agency or person may disclose the identity of any person who makes a child abuse report to that person's employer, except with the employee's consent or by court order. [Penal Code Section 11167(d)]

NOTE: The hospital may wish to supplement this form by providing the new employee a copy of chapter 19, section VI. of the CHA *Consent Manual*, which describes the child abuse reporting requirements. If this approach will be used, this form should indicate:

> *We have attached a copy of the portion of the California Hospital Association Consent Manual that describes the California Child Abuse and Neglect Reporting Act. You should read this material carefully. If you have any questions regarding your reporting obligations, please discuss your questions with [insert the name and title of the person who should answer questions].*

NOTE: The hospital may supplement this form by discussing any special policy it has regarding notifying supervisors and administration about reports that will be or are made, and how the reporting is coordinated when several employees become aware of the same instance of suspected child abuse or neglect. Such a discussion could, for example, include the following statement:

> *Your supervisor and administration should be notified whenever you believe that you may be required to report suspected child abuse or neglect. In addition, usually several hospital employees and medical staff members will learn about the same instance of suspected abuse or neglect. The patient's attending physician (or other designated person) shall be responsible for making the reports or for identifying the member of the health care team who shall assume this responsibility.*

I have read the attached information regarding child abuse and neglect reporting obligations under California law. I understand that I must comply with these legal requirements, and I agree to do so.

Date: ______________________________

Signature: ___________________________
(employee)

Signature: ___________________________
(witness)

NOTE: The employer is required by law to attach a copy of Penal Code Sections 11165.7, 11166 and 11167 to this form.

Reference: Penal Code Sections 11165.7, 11166 and 11167

FORM 19-3

REPORT OF INJURY OR CONDITION RESULTING FROM NEGLECT OR ABUSE

(To a Patient Received From a Licensed Health Facility)

This report must be made within 36 hours.

(Name of patient) ______________________________ has been brought to *(hospital)* ______________________________, *(address)* ______________________________ *(city)* ______________________________, from a health facility, as defined in Health and Safety Code Section 1250, or from a community care facility, as defined in Health and Safety Code Section 1502. The patient identified above exhibits a physical injury or condition which, in the opinion of the undersigned physician, reasonably appears to be the result of neglect or abuse.

The character and extent of the physical injury or condition is:

____

____

Date: ______________________________

Signature: ______________________________
(hospital's duly authorized representative)

Title: ______________________________

Signature: ______________________________
(physician)

Reference: Penal Code Section 11161.8